

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SELWYN LAMAR TALLEY,

Plaintiff,

v.

CITY OF NORTH LAS VEGAS, *et al.*,

Defendants.

Case No. 2:22-cv-01115-ART-BNW

ORDER
(ECF No. 8)

Plaintiff Selwyn LaMar Talley sued the City of North Las Vegas, Chief of Police Pamela Ojeda, Detective Lieutenant Carolyn White, Marisa Rodriguez, and Katheryne Gaspardi in their official and individual capacities for employment discrimination under 42 U.S.C §§ 1981, 1983, Title VII of the Civil Rights Act, NRS 613.330 and 613.440, state defamation law, conspiracy, and whistleblower retaliation after Plaintiff was demoted from his position as a police officer with the North Las Vegas Police Department. The Court held a hearing adjudicating Defendants' motion to dismiss in August 2023 in which the Court ruled from the bench. (ECF No. 49.) Both parties moved for entry of a written order on the motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff worked as a police officer with the North Las Vegas Police Department for several years. In 2016, Plaintiff was appointed to the position of domestic violence liaison officer for the City Attorney. Two years later, Defendant Ojeda and Defendant White were promoted to supervisory positions over Plaintiff. Plaintiff alleges that Defendant White assigned Plaintiff a substantially higher caseload than other officers. Plaintiff alleges that Defendants monitored his computer, represented to the city attorney that Plaintiff had a DUI, and that Defendant Gaspardi restricted Plaintiff's access to reports that showed that

1 Plaintiff had identified and recommended stricter punishments on dangerous
2 suspects who went to commit serious crimes. On June 4, 2020, Defendant
3 Gaspardi told Plaintiff that he was demoted from the City Attorney's office to
4 patrol, a demotion which carried a pay reduction of eight percent. Plaintiff learned
5 later that the Department had replaced him with a white officer. One week later,
6 Plaintiff filed notice to retire and receive his badges and concealed carry permit
7 for retired police officers. Defendant Chief Ojeda denied Plaintiff's request.

8 A few weeks later, Plaintiff sought reinstatement. Human Resources
9 rejected his request. According to Plaintiff, Defendant Chief Ojeda started rumors
10 that Plaintiff had not properly followed procedures to retire from the Department
11 and taken property, namely badges, from the Department that he was not entitled
12 to take.

13 Plaintiff filed a charge with the EEOC on March 30, 2021, 299 days after
14 his demotion.

15 **II. LEGAL STANDARD**

16 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See*
17 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for
18 failure to state a claim is proper only if the plaintiff clearly cannot prove any set
19 of facts in support of the claim that would entitle him or her to relief. *See Morley*
20 *v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the
21 Court takes as true all allegations of material fact stated in the complaint, and
22 the Court construes them in the light most favorable to the plaintiff. *See Warshaw*
23 *v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). While the standard under Rule
24 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more
25 than mere labels, conclusions, or a formulaic recitation of a claim's elements. *See*
26 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "While legal conclusions can
27 provide the framework of a complaint, they must be supported with factual
28 allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

1 **III. ANALYSIS**

2 **A. Motion to Remand**

3 “Federal courts are courts of limited jurisdiction” and possess only the
 4 power granted by the Constitution and statute. *Kokkonen v. Guardian Life Ins.*
 5 *Co. of Am.*, 511 U.S. 375, 377 (1994). A defendant may remove a case filed in
 6 state court to federal court if a federal question is present. 28 U.S.C. § 1441. A
 7 federal district court may exercise federal question jurisdiction only when a
 8 plaintiff’s claim for relief depends on application of federal law. *See id.* § 1331.
 9 Plaintiff brings federal causes of action under 42 U.S.C. §§ 1981, 1983 and Title
 10 VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. Because Plaintiff’s claims
 11 for relief depend on application of federal law, and the motion to remand is
 12 denied.

13 **B. Motion to Dismiss Re: Capacity**

14 Defendants seek to dismiss claims against officers in their official capacity
 15 as duplicative of Plaintiff’s claim against the Department. The Court agrees.
 16 Official-capacity suits are “only another way of pleading an action against an
 17 entity of which an officer is an agent” and is “to be treated as a suit against the
 18 entity.” *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985) (citing *Monell v. New*
 19 *York City Dept. of Social Services*, 436 U.S. 658, 690, n. 55 (1978)). Plaintiff’s
 20 claims against Defendants in their official capacity may thus be dismissed as
 21 duplicative. Claims against Defendants in their individual capacity remain.

22 **C. Motion to Dismiss Re: Discrimination Claims**

23 Defendants moved to dismiss Plaintiff’s discrimination claims as untimely
 24 and implausible. The Court rejects both grounds.

25 First, the Court rejects Defendant’s argument that Plaintiff’s claims are
 26 time-barred. Generally, EEOC charges must be filed within 180 days of alleged
 27 unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1). In states with an anti-
 28 discrimination agency that has concurrent jurisdiction over employment

1 discrimination, the deadline to file with the EEOC extends to 300 days. 29 CFR
2 § 1601.13(a)(4)(ii)(A). Nevada's Equal Rights Commission is a state anti-
3 discrimination agency with concurrent jurisdiction over employment
4 discrimination claims. Plaintiff filed his charge with the EEOC within 300 days of
5 the alleged unlawful employment practice. Defendant's motion to dismiss
6 Plaintiff's EEOC charge is therefore denied.

7 Additionally, the Court rejects Defendants' motion to dismiss conduct
8 alleged to have occurred more than 300 days before Plaintiff's EEOC charge. To
9 timely file a Title VII hostile work environment claim, "the employee need only file
10 a charge within 180 or 300 days of any act that is part of the hostile work
11 environment." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 118 (2002);
12 *see, e.g., Davis v. California Dep't of Corr. & Rehab.*, 484 F. App'x 124, 130 (9th
13 Cir. 2012). Plaintiff may allege discriminatory conduct from before the 300-day
14 statute of limitations period that together with conduct within the 300-day
15 practice forms one part of a whole unlawful employment practice. These
16 allegations survive the motion to dismiss.

17 Next, the Court dismisses Plaintiff's § 1981 claim, with leave to refile as a
18 § 1983 claim. "A plaintiff seeking to enforce rights secured by § 1981 against a
19 state actor must bring a cause of action under § 1983." *Yoshikawa v. Seguirant*,
20 74 F.4th 1042, 1047 (9th Cir. 2023). The Court thus dismisses Plaintiff's § 1981
21 claim with leave to refile it as a § 1983 claim enforcing Plaintiff's rights
22 under § 1981.

23 Next, the Court rejects Defendants' argument that Plaintiff has failed to
24 state a *Monell* claim against the city. To make a *Monell* claim, Plaintiff must show
25 "(1) he was deprived of a constitutional right; (2) the municipality had a policy;
26 (3) the policy amounted to deliberate indifference to [his] constitutional right; and
27 (4) the policy was the moving force behind the constitutional violation." *Lockett v.*
28 *Cnty. of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020) (citing *Dougherty v. City*

1 of *Covina*, 654 F.3d 892, 900 (9th Cir. 2011)). Alternatively, “a municipality can
2 be liable for an isolated constitutional violation when the person causing the
3 violation has ‘final policymaking authority.’” *Christie v. Iopa*, 176 F.3d 1231, 1235
4 (9th Cir. 1999). In a complaint filed by a *pro se* civil rights plaintiff, the Court
5 construes the pleadings liberally affords the petitioner the benefit of any doubt.
6 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Plaintiff alleges deprivation of
7 a constitutional right, that his disparate treatment was part of a policy and
8 practice of the municipality, and while he does not mention a final policy maker,
9 the Court will construe Plaintiff’s *pro se* complaint liberally and permit the *Monell*
10 claim to survive the Motion to Dismiss.

11 **D. Motion to Dismiss Re: Defamation Claims**

12 Defendants moved to dismiss Plaintiff’s defamation claims on various
13 grounds, including that EEOC charges are privileged, that Defendant Ojeda’s
14 claim that Plaintiff did not turn in his HR-218 form is not defamatory, and that
15 Plaintiff failed to allege defamation with specificity. The Court grants the motion
16 to dismiss on Plaintiff’s defamation claims regarding EEOC charges and rejects
17 it on the remaining two grounds.

18 Statements that are part of an EEOC investigation are confidential. 42
19 U.S.C. § 2000e–5(b). If neither the EEOC nor the defaming party publishes them,
20 they are not actionable for defamation. The Court grants Defendants’ motion to
21 dismiss these claims.

22 The Court rejects Defendants’ arguments that Defendant Ojeda’s claim that
23 Plaintiff failed to turn in his HR-218 form is not defamatory and that Plaintiff
24 failed to specifically allege defamatory statements. Plaintiff’s claim regarding the
25 HR-218 form is interrelated with other factual issues, including Plaintiff’s
26 allegation that Defendant Ojeda claimed to refuse to authorize the form because
27 of the allegedly false claim that Plaintiff had a DUI. The Court denies the Motion
28 to Dismiss Plaintiff’s defamation, false light, and libel claims outside of those

1 made in response to Plaintiff's EEOC charge.

2 **E. Motion to Dismiss Re: Marisa Rodriguez**

3 The Court agrees with Defendants' motion to dismiss Defendant Rodriguez
4 because Plaintiff fails to allege specific involvement in his claims. Plaintiff claims
5 Defendant Rodriguez drafted the city's response to his EEOC charge and that he
6 sent Defendant Rodriguez records requests. These are insufficient bases to sue
7 Defendant Rodriguez. The response to the EEOC charge was privileged. Plaintiff
8 alleges no facts that connect the records requests to Plaintiff's claims. The Court
9 dismisses Defendant Rodriguez without prejudice and with leave to amend.

10 **F. Intentional Infliction of Emotional Distress**

11 The Court agrees with Defendants' argument to dismiss Plaintiff's
12 Intentional Infliction of Emotional Distress (IIED) claim. IIED requires showing
13 "(1) extreme and outrageous conduct with either the intention of, or reckless
14 disregard for, causing emotional distress, (2) the plaintiff's having suffered severe
15 or extreme emotional distress and (3) actual or proximate causation." *Star v.*
16 *Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 92 (1981). Plaintiff has failed to plead
17 truly outrageous conduct or his own physical manifestations of severe emotional
18 distress. This claim is dismissed without prejudice and with leave to amend.

19 **G. Conspiracy**

20 The Court rejects Defendants' argument to dismiss Plaintiff's conspiracy
21 claim as barred by the intracorporate conspiracy doctrine. The intracorporate
22 conspiracy doctrine states that "an agreement between or among agents of the
23 same legal entity, when the agents act in their official capacities, is not an
24 unlawful conspiracy." *Ziglar v. Abbasi*, 582 U.S. 120, 153, 137 S. Ct. 1843, 1867,
25 198 L. Ed. 2d 290 (2017) (citing *Copperweld Corp. v. Independence Tube Corp.*,
26 467 U.S. 752, 769–771 (1984)). Plaintiff alleges that Defendants conspired to
27 deprive Plaintiff of his civil rights by withholding his HR-218 certification under
28 false pretenses and preventing him from obtaining records. This conduct is not

1 part of the City of North Las Vegas's lawful business. The intracorporate
2 conspiracy doctrine does not bar Plaintiff's claim at this stage.

3 **H. Whistleblower Retaliation**

4 The Court rejects Defendants' argument to dismiss Plaintiff's whistleblower
5 retaliation claim in part and grants it in part. Title VII permits Plaintiffs to sue
6 employers who commit unlawful employment practices on account of an
7 employee reporting violations to the EEOC. 42 U.S.C. § 2000e-3(a). NRS 613.340
8 permits a retaliation causes of action that tracks this federal cause of action.
9 *Pope v. Motel 6*, 114 P.3d 277, 281 (2005). Plaintiff's allegations that his demotion
10 was the result of whistleblowing may not proceed because Plaintiff did not allege
11 any whistleblowing prior to his demotion. Plaintiff's allegation that his demotion
12 were the result of him disagreeing about charges to file against a specific burglary
13 suspect are likewise not actionable because Plaintiff did not whistleblow to an
14 outside entity. Plaintiff's argument that the City refused to reinstate him and
15 issue him the HR-218 form because he filed an EEOC charge is a cognizable
16 whistleblowing claim, and this claim alone may proceed.

17 **IV. CONCLUSION**

18 Plaintiff's motion to remand (ECF No. 19) is denied.

19 Defendants' motion to dismiss (ECF No. 8) is granted in part and denied in
20 part.

21 The claims against the individual defendants in their official capacities are
22 dismissed with prejudice.

23 Plaintiff's § 1981 claim is dismissed with prejudice and leave to amend to
24 allege as a § 1983 claim.

25 The claims against Defendant Rodriguez are dismissed with leave to
26 amend.

27 Plaintiff's defamation, false light, and libel claims are dismissed with
28 respect to privileged statements made in the context of responding to the EEOC

1 charge.

2 Plaintiff's intentional infliction of emotional distress claim is dismissed with
3 leave to amend.

4 The motion to dismiss is denied in all other respects.

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6 DATED THIS 22nd day of October 2024.

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8 ANNE R. TRAUM
9 UNITED STATES DISTRICT JUDGE
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